



STIPULATED REMEDIATION GRANT GUIDELINES

Introduction

The Indiana Brownfields Program (“Program”) offers Stipulated Remediation Grants (“Remediation Grants”) to qualifying Indiana political subdivisions (as defined by Indiana Code (“IC”) 13-11-2-164(c)) (“Applicants”). Examples of political subdivisions that have qualified as Applicants for Program financial assistance in the past can be found on the Program’s web site at <http://www.in.gov/ifa/brownfields/>. Each Remediation Grant awarded will stipulate that the Applicant satisfy the requirements set forth in these guidelines to avoid being required to repay its Remediation Grant over a five-year period with interest.

An eligible Indiana political subdivision may apply to the Program for a Remediation Grant to finance environmental remediation costs at an identified brownfield within its jurisdiction. Not-for-profit or for-profit corporations may be co-applicants, but will not directly receive funding from the Program; all awards are made to the political subdivision involved in a project. Remediation Grants may not be used to remediate sites contaminated solely by petroleum, although sites contaminated by both hazardous substances and petroleum are eligible. The Program offers a Petroleum Remediation Grant to address assessment and remediation of petroleum contamination.

No Applicant or Site may receive more than \$400,000 in any round. Three million dollars has been made available in State Fiscal Year 2008 for Remediation Grants and will be awarded in two funding rounds (\$1,500,000 available per round). Application deadlines will be posted on the Program’s web site at <http://www.in.gov/ifa/brownfields/>.

Eligibility Criteria

To be eligible for Remediation Grant funding, Applicants must be able to demonstrate that the Applicant or any entity involved in the project (i.e., co-applicant, property owner, developer) is not a liable party under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et. seq.*, (“CERCLA”) or Indiana’s Hazardous Substance Response Trust Fund law, IC 13-25-4. Under CERCLA § 107 and IC 13-25-4-8, current owners and operators of a facility, owners and operators of a facility at the time of disposal of a hazardous substance, parties that arranged for the treatment or disposal of hazardous substances, and parties that accepted hazardous substances for transport to disposal or treatment facilities are potentially liable for cleanup or paying the cost of cleaning up a site. Thus, an owner of contaminated land may be liable under CERCLA § 107 or IC 13-25-4 even though he/she did not cause or contribute to the contamination at the site. Note, however, that CERCLA § 107 and IC 13-25-4 do not apply to petroleum sites.

Applicants, or any other entity involved in the project, that are eligible, or that seek to become eligible, to receive a Remediation Grant based on a liability protection from CERCLA as a: (1) bona fide prospective purchaser (“BFPP”), (2) contiguous property owner (“CPO”), or (3) innocent landowner (“ILO”) (known as the “landowner liability protections”), must meet certain threshold criteria and satisfy certain

continuing obligations to maintain their status as an eligible Applicant. These include, but are not limited to the following:

- a. All Remediation Grant Applicants (or entities involved in the project) asserting a BFPP, CPO, or ILO limitation on liability must perform (or have already performed) “all appropriate inquiry,” as found in section 101(35)(B) of CERCLA, **on or before the date of their acquisition** of the property.
- b. Applicants seeking to qualify as bona fide prospective purchasers or contiguous property owners must not be:
 - a. potentially liable, or affiliated with any other person that is potentially liable, for response costs at the facility through (a) any direct or indirect familial relationship; or (b) any contractual, corporate, or financial relationships; or
 - b. a reorganized business entity that was potentially liable or
 - c. otherwise liable under CERCLA § 107(a) as a prior owner or operator, or generator or transporter of hazardous substances to the facility.
- c. Landowners must meet certain continuing obligations in order to achieve and maintain status as a landowner protected from CERCLA liability. These continuing obligations include:
 - a. complying with any land use restrictions established or relied on in connection with the response action at the vessel or facility and not impeding the effectiveness or integrity of institutional controls;
 - b. taking reasonable steps with respect to hazardous substance releases;
 - c. providing full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration;
 - d. complying with information requests and administrative subpoenas (applies to bona fide prospective purchasers and contiguous property owners); and
 - e. complying with legally required notices (again, applies to bona fide prospective purchasers and contiguous property owners) [see CERCLA §§ 101(40)(B)-(H), 107(q)(1)(A), 101(35)(A)-(B)].

In order to demonstrate the above or any other potentially applicable liability exemption (i.e., involuntary acquisition by a political subdivision), please provide written answers to the questions found in Attachment A as a part of your application.

Furthermore, if an Applicant intends to re-grant or loan a Remediation Grant to a third party, the Applicant must ensure that a borrower or sub-grant recipient is not potentially liable under CERCLA or IC 13-25-4 and may rely on its own investigation which can include an opinion from the borrower’s or sub-grant recipient’s counsel. However, the Applicant must advise the borrower or sub-grant recipient that the investigation and/or opinion of the borrower’s or sub-grant recipient’s counsel is not binding on the Program, Indiana Finance Authority, Indiana Department of Environmental Management or State. As part of its due diligence, however, the Program will request the information received by the Applicant in its investigation. If at any time during the effective period of the grant award the Applicant or any entity involved in the project is determined to be a responsible party under CERCLA § 107 or IC 13-25-4, any portion of the grant that has been disbursed will become immediately due and payable by the Applicant subject to a reasonable repayment schedule determined by the Program based on the amount due.

In addition to the above, Applicants must also demonstrate the following at the time an application is submitted:

1. The Applicant meets the definition of political subdivision (as defined by IC 13-11-2-164(c)).
2. The Applicant has completed, or has caused to be completed, a written American Society for Testing and Materials (“ASTM”) Phase I (E 1527-05) report prepared in compliance with the All Appropriate Inquiries Final Rule (70 FR 66070).
(see http://www.epa.gov/swerosps/bf/aai/aai_final_rule.pdf)
3. The Applicant has completed, or has caused to be completed, a Phase II Environmental Site Assessment and has data of sufficient quantity and quality to support the planned remedial activities.
4. The Applicant verifies that adequate funding is committed to complete the remedial activities if the actual cost of remediation exceeds the maximum Remediation Grant amount.
5. The Applicant will address any contamination not covered by a Remediation Grant.
6. The current owner of the brownfield, if not the Applicant, has provided written consent to the Applicant for site access to perform the Remediation Grant-funded activities. Access to the brownfield must be given to the State, any consultant(s), the Applicant, and any of their respective representatives or agents for the duration of the grant performance period (two years from time of award).

The following items are also threshold eligibility criteria and may disqualify an application from consideration for Remediation Grant funding:

1. The site is subject to an open or pending state or federal enforcement action.
2. The site is under Resource Conservation and Recovery Act Corrective Action.
3. The site presents an imminent threat to human health or the environment.

Note: For purposes of threshold eligibility review, the Program, if necessary, may seek clarification of applicant information and/or consider information from other sources, including Indiana Department of Environmental Management (“IDEM”), Indiana Finance Authority, or United State Environmental Protection Agency files.

Eligible Uses of Grant Funds; Disbursement Procedures

Remediation Grant funding can be used for costs associated with eligible and approved cleanup activities (“Approved Remediation Costs”). Funding may also be used for certain other costs incurred in conjunction with Approved Remediation Costs as approved by the Program. Costs eligible for Remediation Grant funding include:

- Remediation Work Plan development
- Soil and/or groundwater remediation activities
- Asbestos abatement

Remediation activities conducted with Remediation Grants must be performed consistent with the Indiana Department of Environmental Management Risk Integrated System of Closure (“RISC”) guidelines. RISC is a set of health-based standards used to evaluate cleanup options and contaminants based on detailed site data and proposed site end use to determine the appropriate cleanup option and contaminant

reduction level necessary. All activities conducted with Remediation Grant funds must receive Program approval *prior* to implementation.

Remediation Grant disbursements will be made by the Program to the political subdivision for payment to the consultant(s) after the Program receives invoices for work performed consistent with Program-approved activities. Specific information about eligible uses of grant funds, ineligible activities and expenses, and grant disbursements is available in the *Grant Disbursement Guidelines for Stipulated Remediation Grants* and can be found at <http://www.brownfields.in.gov>.

Ineligible Grant Activities

Remediation Grant funding cannot be used for assessment and demolition-related costs, and reimbursement for prior remediation activities is not permitted.¹ All activities conducted with Remediation Grant funds must receive Program approval *prior* to implementation. In addition, costs incurred due to specific requirements of the IDEM Voluntary Remediation Program (i.e., consultant oversight fees, application fees, etc.) or pursuit of historic insurance coverage will not be covered by the Remediation Grant. Specific information about eligible uses of grant funds, ineligible activities and expenses, and grant disbursements is available in the *Grant Disbursement Guidelines for Stipulated Remediation Grants* and can be found at <http://www.brownfields.in.gov>.

Stipulations

1. Investment (match requirement): Applicants will be required to demonstrate a certain level of investment in their sites within a two-year period following the award of a Remediation Grant. The required investment will be determined based upon an Applicant's population and Median Household Income (MHI) from the 2000 census data. Please refer to the following chart to determine an Applicant's required investment:

	Population < 10,000	10,001 to 20,000	20,001 +
MHI < 30,000	\$ -0-	\$.25 per \$1 Grant	\$.50 per \$1 Grant
30,000 to 40,000	\$.25 per \$1 Grant	\$.50 per \$1 Grant	\$.75 per \$1 Grant
40,000+	\$.50 per \$1 Grant	\$.75 per \$1 Grant	\$1.00 per \$1 Grant

The source of the intended investment must be identified in the Applicant's application. In-kind services will be considered "investment" for matching funds only if such services are directly related to the Applicant's project and/or work performed at the project site. Permanent jobs created at the redeveloped project site will receive a credit of \$1,000 per job created. Temporary jobs (e.g., construction related) may not be counted. While not limited to the following, other potential investment can include costs associated with remediation, demolition, infrastructure, and construction. Remediation Grants not matched within the two-year period from the date of the financial assistance agreement with the Program will become a five-year term loan with an interest rate of three percent to be accrued from the date the Remediation Grant was awarded. Requests for an extension of the two-year period and an alternative investment credit (e.g., investment in adjacent properties) must be made in writing to the Program at the time of application and will be evaluated on a case-by-case basis. Such requests may affect a project's ranking. Notwithstanding any of the foregoing, the Indiana Brownfields Program reserves the right to determine if the activities the Applicant applies to this investment stipulation satisfy the requirement.

¹Other funding is available from the Indiana Brownfields Program for assessment, demolition, and petroleum remediation activities. Please visit http://www.in.gov/ifa/brownfields/financial_assistance.htm for more information.

2. Competitive Bidding: Applicants must demonstrate services to be reimbursed with Remediation Grant funding have been/will be competitively bid. Professional services need to be procured in compliance with IC 5-16-11.1, and activities other than professional services are required to be procured in compliance with IC 36-1-12. Program Project Managers may assist in developing bid specifications for work to be performed with Remediation Grant funds. Applicants that do not submit detailed information demonstrating a competitive bidding process with their Remediation Grant applications will be required to do so before funding will be disbursed. A competitive bidding fact sheet is available at <http://www.in.gov/ifa/brownfields/>.

Application Procedure

Using the Program's online application system available on the Program's web site at http://www.in.gov/ifa/brownfields/financial_assistance.htm, Applicants must complete the following and submit (upload) to the Program by 5:00 p.m. on the application deadline:

1. One fully-completed and digitally-verified online application; and
2. Documentation evidencing the Applicant meets the definition of political subdivision as defined by IC 13-11-2-164(c); and
3. Written consent for site access from the current owner of the brownfield (if not owned by the Applicant); and
4. Phase I Environmental Site Assessment (ASTM E1527-05) and all other reports and maps illustrating previous environmental assessment activities; and
5. Sufficient detail of how costs will be allocated and the specific work to be performed in the format outlined by the Program in the *Grant Disbursement Guidelines for Stipulated Assessment Grants* found at <http://www.brownfields.in.gov>; and
6. Documentation demonstrating competitive bidding for services to be reimbursed with grant funds; and
7. Most recent audit from the State Board of Accounts; and
8. Other submittals as indicated in the application or as available.

Applications will be evaluated and ranked based upon the criteria set forth below. Remediation Grants will be awarded to the highest ranking eligible applications, and priority for funding will be given to sites that are fully-characterized. An Applicant's past performance on projects that have received brownfields grant and loan assistance will be considered during the review process. Remediation Grant recipients will be required to execute a Financial Assistance Agreement with the Indiana Finance Authority and the Indiana State Budget Agency.

If the application deadline referred to in these guidelines falls on a day on which the Program offices are closed for business, the event shall occur on the next business day. A fully-completed and digitally-verified online application must be received by the Program no later than 5:00 p.m. on the day it is due. There is no application fee. The online application reflecting these guidelines, as well as information on applicable application deadlines, is available at <http://www.brownfields.in.gov>.

Selection Criteria

Applicants will be competitively evaluated in one of two categories depending on the size of the community. Remediation Grant dollars will be allocated to categories based on the number of potential applicants in each category and the ranking of projects.

Category One:	Cities, Towns and Counties with populations of 10,000 or more:	50%
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Category Two:	Cities, Towns and Counties with populations of less than 10,000:	50%
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Projects will be scored based on the following criteria:

1. Demographic Factors (55 possible points)

A. Net Assessed Value Per Capita (10 possible points)

Up to 53% of Indiana's median Net Assessed Value Per Capita	10 points
Between 53% and 66% of Indiana's median Net Assessed Value Per Capita	7 points
Between 67% and 113% of Indiana's median Net Assessed Value Per Capita	5 points
Between 114% and 200% of Indiana's median Net Assessed Value Per Capita	3 points
In excess of 200% Indiana's median Net Assessed Value Per Capita	0 points

B. Poverty Rate (10 possible points)

Zip codes with more than 170 households receiving TANF*	10 points
Zip codes with less than 170 but more than 40 households receiving TANF	7 points
Zip codes with less than 40 but more than 11 households receiving TANF	5 points
Zip codes with less than 11 but more than 0 households receiving TANF	0 points

*Temporary Assistance to Needy Families ("TANF")

C. The site located in any of the following (15 possible points) Community Revitalization Enhancement District ("CRED"), Urban Enterprise Zone, "Dinosaur" building, federally-designated Enterprise Zone, or community/locally designated brownfields revitalization zone or slum and blighted area

D. List the Census Tract in which the Site is located (10 possible points)

E. Per Capita Income (10 possible points)

2. Local Support for Project (100 possible points)

A. Neighborhood Comment and Input (50 possible points)

Plans announced at public hearing and comments sought from public	20 points
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Favorable responses received and/or proactive follow up to any negative comments 10 points

Additional or more focused community and/or neighborhood input sought 20 points

B. Coordinated Local Efforts (50 possible points)

Local coalition/organization meeting and working regularly on brownfields issues and/or brownfields coordinator designated; local brownfields sites identified and/or prioritized 50 points

Joint local effort by numerous parties to apply for grant; some type of coalition to address brownfields issues locally 35 points

Firm plans to form brownfields workgroup or coalition to address brownfields issues locally 20 points

No brownfields workgroup or coalition exists to address brownfields issues locally; joint local effort by more than one party to apply for grant 10 points

3. Economic or Community Development Potential for Site – Subjective (150 possible points)

Applicants should focus on the following:

- Long term plans for property, including its place in the overall economic and community development plans of the community;
- Potential for project success based on formal contracts or designated funds to accomplish remediation and redevelopment;
- Impact project will have on overall economic development plans of community, including potential increase to tax base, job creation, and investment in project property;
- Impact project will have on overall community development plans of the community, including the creation, preservation, or addition to a park, greenway, recreational facility, or other municipal benefit;
- Previous local efforts to redevelop property and/or address environmental issues of the site;
- Address the marketability of the site, if applicable.

4. Geographic Distribution of Grant Money (30 possible points)

A. This is the only project this Applicant is applying for in this round. 10 points

B. This is the only project seeking funding from this county in this round. 5 points

C. This is the only project from a two or more county area seeking funding in this round.

5 points

D. This Applicant has not received grant funding in any prior round.

10 points

5. CLEAN Community Designation (10 points)

The Indiana Comprehensive Local Environmental Action Network (“CLEAN”) Community Challenge is a voluntary recognition program for local Indiana government. CLEAN helps communities take steps to plan, develop, and implement a quality of life plan. Additional information about the CLEAN Community Challenge can be found at <http://www.in.gov/idem/programs/oppta/clean/index.html>.

Contact Information

We welcome comments on the Remediation Grants at any time. Questions regarding these guidelines or the Remediation Grants can be directed to the Program’s Financial Resources Coordinator by phone at (317) 234-1688. These guidelines may be modified at any time by the Indiana Finance Authority Board to address demand and other issues to promote the effective and efficient administration of the Indiana Brownfields Program.

Revision Date: 8/31/07

Attachment A

Property Ownership Eligibility Questions

Indiana Brownfields Program (“Program”) funding may not be used to pay for response costs at a brownfield site for which the applicant (eligible political subdivision per IC 13-11-2-164(c)) or any other entity involved in the project (collectively, the “Applicant”) is potentially liable under CERCLA § 107 or IC 13-25-4. The following questions are intended to help the Program ensure that the Applicant is not liable under CERCLA for response costs at the site designated in its application. Please answer the following questions fully and in the order they appear. (Note: based on the responses, the Program may need to obtain additional information in order to make this determination).

1. Affirm that the Applicant is not potentially liable for contamination at the site under CERCLA § 107 (*e.g.*, as a current owner or operator of a facility, an owner or operator of a facility at the time of disposal of a hazardous substance, a party that arranged for the treatment or disposal of hazardous substances, or a party that accepted hazardous substances for transport to disposal or treatment facilities at the site) and explain why.¹
2. Enforcement Actions. Identify known ongoing or anticipated state or federal environmental enforcement actions related to the brownfield site for which funding is sought. Describe any inquiries or orders from federal, state, or local government entities that the Applicant is aware of regarding the responsibility of any party (including the Applicant) for the contamination or hazardous waste at the site. The information provided in this section may be verified, and the Program may conduct an independent review of information related to the Applicant’s responsibility for the contamination or hazardous waste at the site.
3. Information on Liability and Defenses/Protections.
 - a. Information on the Property Acquisition. To save space, the information in subsections i-v below may be combined into one response, though please be sure to fully answer each question. Describe:
 - i) How the Applicant acquired or will acquire ownership (*e.g.*, by negotiated purchase from a private individual, by purchase or transfer from another governmental unit, by foreclosure of real property taxes, by eminent domain, or other (describe));
 - ii) The date the Applicant acquired or will acquire the property;
 - iii) The nature of the Applicant’s ownership (fee simple or other), if applicable;
 - iv) The name and identity of the party from whom the Applicant acquired ownership (*i.e.*, the transferor), if applicable;
 - v) All familial, contractual, corporate or financial relationships or affiliations the Applicant has or had with all prior owners or operators (or other potentially responsible parties) of the property (including the person or entity from which the Applicant acquired the property).

¹ Because current owners of sites are potentially liable under CERCLA, Applicants who own the site (or plan to acquire the site) must be able to meet the requirements of one of the CERCLA landowner liability protections, such as the bona fide prospective purchaser provision (CERCLA § 107(r)), the innocent landowner defense (CERCLA § 107(b)(3) and 101(35)(A)), or the exclusion for state or local governments that involuntarily acquire property (CERCLA § 101(20)(D); IC 13-25-4-8(e)).

- b. Timing of Hazardous Substance Disposal. Identify whether all disposal of hazardous substances at the site occurred before the Applicant acquired (or will acquire) the property and whether the Applicant caused or contributed to any release of hazardous substances at the site. Affirm that the Applicant has not, at any time, arranged for the disposal of hazardous substances at the site or transported hazardous substances to the site.
- c. Pre-Purchase Inquiry. Describe any inquiry by the Applicant or others into the previous ownership, uses of the property, and environmental conditions conducted prior to taking ownership. Please include in the description:
 - i) the types of site assessments performed (*e.g.*, ASTM Phase I or equivalent), the dates of each assessment,² and the entity for which they were performed (state whether the assessment was performed specifically for the Applicant, or if not, the name of the party that had the assessment performed and that party's relationship to the Applicant); and
 - ii) who performed the assessments and identify his/her qualifications to perform such work;
- d. Post-Acquisition Uses. Describe all uses to which the property has been put since the Applicant acquired ownership (or the uses that the Applicant anticipates once it acquires the property) through the present, including any uses by persons or entities other than the Applicant. Please provide a timeline with the names of all current and prior users during the time of the Applicant's ownership; the dates of all uses; the details of each use, including the rights or other reason pursuant to which the use was claimed or taken (*e.g.*, lease, license, trespass); and the Applicant's relationship to the current and prior users.
- e. Continuing Obligations.³ Describe *in detail* the specific appropriate care that the Applicant exercised (or if the property is yet to be acquired, that the Applicant will exercise upon acquiring the property) with respect to hazardous substances found at the facility by taking reasonable steps⁴ to:
 - i) stop any continuing releases;
 - ii) prevent any threatened future release;
 - iii) prevent or limit exposure to any previously released hazardous substance.

Please confirm your commitment to:

- i) comply with all land use restrictions and institutional controls;

² Please note that if the Applicant's Phase I assessment was conducted more than 180 days prior to the date it plans to purchase the property, the Applicant will need to update certain aspects of the Phase I in order to take advantage of the bona fide prospective purchaser provision. If this is the case, please affirm that the Applicant has or will conduct the appropriate updates within 180 days of purchase.

³ Owners of contaminated land should be aware that some CERCLA liability protections require that the site owner meet certain continuing obligations. For example, owners must comply with land use restrictions and institutional controls; take reasonable steps with respect to the hazardous substances on the property; cooperate, assist and allow access to authorized representatives; and comply with CERCLA information requests and subpoenas and provide legally required notices.

⁴ Please note that reasonable steps may include actions such as limiting access to the property, monitoring known contaminants, and complying with state and/or local requirements. The steps taken to prevent or limit exposure to previously-released hazardous substances may depend, for example, on such things as the location of the site in relation to the public and whether the public has been known to use (or even trespass on) the site. Program technical staff are available to discuss reasonable steps for a site should an Applicant require assistance to determine the reasonable steps required at the brownfield.

- ii) assist and cooperate with those performing the cleanup and to provide access to the property;
- iii) comply with all information requests and administrative subpoenas that have or may be issued in connection with the property; and
- iv) provide all legally required notices.